

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07/07/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

and

The Hon'ble Mr. Justice S. SARDAR ZACKRIA HUSSAIN

Appeal Suit No. 397 of 1989

1. The Shipping Corporation of India Ltd., registered office at Shipping House, 245, Madamkham Salai, Bombay-400 021.

2. K.P.V. Shaik Mohammed Rowther and Co., P.Ltd., Shipping Agents and Contractors, 202, Linghi Chetty Street, Madras-1. .. Appellants/Defendants.

-Vs-

Union of India, represented by Embarkation Commandant, Embarkation Headquarters, Fort St. George, Madras-9. .. Respondent/Plaintiff.

Appeal Suit is filed under Section 96 of the Code of Civil Procedure against judgment and decree dated 28-3-1988, passed by the VI Additional Judge, City Civil Court, Madras in O.S.No. 9173 of 19 84.

!Mr. M. Vijayan for M/s. King and Patridge:- For Appellants.

^Mr. N. Muralikumaran, Addl. Central Government Standing counsel:- For Respondent.

:JUDGMENT

(Judgment of the Court was delivered by P. Sathasivam, J.,)

Defendants in O.S.No.9173 of 1984 on the file of Sixth Additional Judge, City Civil Court, Madras, are the appellants in the above appeal. The plaintiff/respondent herein-Union of India represented by Embarkation

Commandant filed the said suit for recovery of a sum of Rs.82,320/- together with interest at the rate of 12 per cent per annum from the date of plaint till date of realisation.

2. The case of the plaintiff is briefly stated hereunder:

The plaintiff was the consignee of two packages containing Electric Firing Units and Capacitors consigned to 29 E D Air Force Station, Bangalore. The above consignment was shipped in good order and condition by the High Commission of India, Supply Wing, India House, Aldwych, London WC 2. The consignment was shipped in apparent good order and condition from the Port of London to the Port of Madras by Vessel S.S. Vishva Siddhi which arrived at the Port of Madras on 17-8-1979. The consignment was covered under Bill of Lading No. IG-1 dated 22-6-1979. The Master of the Vessel S.S. Vishva Siddhi issued a clean Bill of Lading at the Port of London under IG-1 dated 22-6-1979 at the Port of London for having received the said consignment on Board the said Vessel. The Vessel S.S. Vishva Siddhi arrived at the Port of Madras on 17-9-1979. The goods were not cleared from the Vessel and it was found that the consignment referred to above, addressed to the plaintiff, was not landed. After a thorough search it was found that the consignment had not landed and on an application, the Madras Port Trust issued a certificate of shortlanding, namely, Certificate 'B' No.311/8 dated 17-9-1979/16-10-1979 to the effect that the consignment had not landed. Immediately the plaintiff preferred a Provisional Claim on 23-11-79 with the second defendant, who is the agent of the first defendant. The plaintiff called upon the second defendant, the Steamer Agents of the first defendant to settle their claim in respect of the short landed consignments.

3. On 2-6-1980 the plaintiff preferred a regular claim Bill to the second defendant in respect of the Air Force Stores Shortlanded by the Vessel S.S. Vishva Siddhi which arrived at the Port of Madras, and requested them to settle the claim at an early date. The total value of the two packages, shortlanded, containing 28 Nos. Electrical Firing Unit and 50 Nos. Capacitors came to 13,260 Pounds equivalent to Rs.2,39,788-86 p. Since in spite of several reminders by way of communication, the short landed consignment was not settled by the defendants that too after prolonged correspondence, the plaintiff is forced to file the suit to recover the amounts.

4. The first defendant filed a written statement denying all the allegations contained in the plaint. It is stated that the suit is not maintainable as the same has become time barred under Article 3 Rule 6 of the Carriage of Goods by Sea Act. The subject Vessel M.V. Vishva Siddhi arrived at the Port of Madras on 17th August, 1979 and discharged cargo. Thus, the suit should have been filed on or before 17th August, 1980. However, the suit had been filed only after 7th November, 1984. Thus, the cause of action if any against the first defendant has become totally extinguished and the suit is liable to be dismissed.

5. Regarding merits it is stated that the first defendant was unaware of the contents, quality, nature, etc., of the cargo. As per the provisions of the Customs Act and Section 42 (2) of the Major Port Trusts Act, no vessel is

permitted to discharge cargo and deliver the same directly to the consignee. The Madras Port Trust has been statutorily interposed to receive cargo from all vessels calling at the Port of Madras and deliver the same to the various consignees. The consignee can thereafter make claim only on the Port Trust for non-receipt of cargo and not on the carrier. In the instant case, the first defendant's vessel landed all the cargo consigned for the Port of Madras. On an enquiry, the first defendant informed the plaintiff that the subject cargo was over-carried to Calcutta and requested the plaintiff to take delivery of the same. The plaintiff, however, refused to take delivery on the grounds that the cargo did not conform to the Bill of Lading Specifications. The suit is time barred. The remedy of the plaintiff does not merely become barred by limitation but the right itself becomes extinguished under Article 3 Rule 6 of the Carriage of Goods by Sea Act.

6. The second defendant filed a separate written statement wherein it is reiterated that the suit is time barred under Article III Rule 6 of the Carriage of Goods by Sea Act and, therefore, the same is liable to be dismissed. On merits it is stated that there is no privity of contract between the plaintiff and the second defendant. They are only a Steamer Agent of a disclosed principal namely Messrs. Shipping Corporation of India, the first defendant herein. In any event, the second defendant being an agent, no suit is maintainable both against the principal and the agent.

7. With the above pleadings, Exs. B-1 to B-51 were marked on the side of the plaintiff and Exs. B-1 and B-2 were marked on the side of the defendants. Both sides have not let in oral evidence. The learned 6th Additional Judge, City Civil Court, after framing necessary issues and after considering the materials, decreed the suit as prayed for with costs against the defendants. Questioning the said decree, the defendants have filed the present appeal.

8. Heard Mr. M. Vijayan, learned counsel for the appellants and Mr. N. Muralikumaran, learned Additional Central Government Standing counsel for respondent.

9. The points for consideration in this appeal are:

(i) Whether the suit filed by the plaintiff is barred by limitation under Article III Rule 6 in the Schedule to [The Indian] Carriage of Goods by Sea Act, 1925?

(ii) If the suit is within the limitation period, whether the plaintiff has established the suit claim?

10. Among the above questions, first let us consider the question as to limitation. If it is found that the suit is barred by limitation, there will be no need to take up the second question. The Statement of Objects and Reasons appended to [The Indian] Carriage of Goods by Sea Act, 1925 are:

"3. A Code of rules was drawn up in 1921 by the International Law Association at the Hague. These were subjected to criticism by the various interests affected till finally agreement was reached at the International Conferences

on Maritime Law held in Brussels in October, 1922, and again in October 1923. A Code of rules defining the responsibilities and liabilities to which a carrier of goods by sea should be subject and also the rights and immunities he was entitled to enjoy was drawn up, and it was unanimously recommended that every country should give legal sanction to these rules. The United Kingdom has done so by the Carriage of Goods by Sea Act (1924) (14 and 15 Geo. V,c.22). It is proposed to do the same in India by this Bill."

The relevant provision to be considered is the Rules relating to Bills of Ladings. Article III in the Schedule to [The Indian] Carriage of Goods by Sea Act, 1925 (hereinafter referred to as "the Act") speaks about responsibilities and liabilities of the carrier. Rule 6 of Article III, which alone is relevant for this case, reads as follows:

Article III

Responsibilities and Liabilities

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods."

By relying on Rule 6 of Article III in the Schedule to the Act, learned counsel for the appellants would contend that inasmuch as the suit was not brought within one year after delivery of goods or the date when the goods should have been delivered, the present suit filed only on 7-11-1984 is clearly barred by limitation. It is the claim of the plaintiff that two packages containing electric firing units and capacitors were consigned from London to Bangalore. The vessel, namely, Vishva Siddhi, belonged to the first respondent, was entrusted with the two packages for its safe carriage from London to Madras. The Bill of Lading No. IG-1 dated 22-6-79 was issued by the Master of the said vessel. There is no dispute that the vessel was arrived at the Port of Madras on 17-8-79. However, the said two packages were not cleared from the vessel as it was not landed. Since the goods were not delivered, the Madras Port Trust issued a Certificate of short landing namely Certificate 'B' dated 16-10-79. Thereafter, a claim was made on 23-11-79 to the second defendant who is the agent of the first defendant. It was followed by several letters and reminders. It is further seen that the second defendant informed the plaintiff that two packages were lying at Calcutta and

requested the plaintiff to clear the same. On verification, the plaintiff confirmed that these packages were different and does not correspond with the two packages consigned from London and hence refused to take delivery of the two cartons at Calcutta. Thereafter, the second defendant wrote to the plaintiff and sought for the clarification as to whether the claim in question was kept alive by obtaining the extension of time limit. It is also seen that though the plaintiff sought for extension of time for a period of one year, the fact remains that time was not extended to keep the claim alive within the statutory period. Accordingly, the plaintiff has informed that the claim is statutorily time barred under Article III Rule 6 of the Act. The trial Court considered the question relating to limitation as the first issue. After recording a finding that the plaintiff had made a claim on 23-11-79 to the second defendant who is the Agent of the first defendant and followed by several letters and reminders (Exs. A-1 to A-51), and after referring to a judgement of the Supreme Court in *Nav Rattanmal v. State of Rajasthan*, reported in AIR 1961 SC 1704, decreed the suit with costs.

11. First we shall consider whether the decision reported in AIR 1961 S.C. 1704 (cited supra) is applicable to the case on hand. In that case, the Union of India filed a suit before the Sub Judge First Class, Beawar on the security bond dated 27-2-1940 against Lal Chand Kothari and Seth Pool Chand for recovery of a sum mentioned therein. Several defences were raised by the defendants, but, they were all rejected by the learned Subordinate Judge who granted the respondents a decree in terms prayed for in the suit. The defendants filed an appeal to the Judicial Commissioner who dismissed it, but having regard to the fact that some of the defences turned on the interpretation of the security bond dated 27-2-1940, granted a certificate under Article 133 (1) of the Constitution. An argument was advanced that Article 149 of the Limitation Act prescribed 60 year period of limitation for suits by the Government which was unconstitutional as violating Article 14 of the Constitution. Due to the said plea, the appeal was ultimately held by a Larger Bench consisting of five Honourable Judges of the Supreme Court. While interpreting the claim of the Government, Government contract and money due to the Government etc., Their Lordships have held that in the case of the Government if a claim becomes barred by limitation, the loss falls on the public, i.e., on the community in general and to the benefit of the private individual, who derives advantage by the lapse of time. This itself would appear to indicate a sufficient ground for differentiating between the claims of an individual and the claims of the community at large. Their Lordships have also held that in the case of Governmental machinery, it is a known fact that it does not move as quickly as in the case of individuals. It was further held that there is a rational basis for treating the Government differently as regards the period of limitation and ultimately held that Art.149 does not offend Art.14 of the Constitution. As said earlier, it is clear that granting 60 year period for Government dues under Article 149 of the Limitation Act does not offend Article 14 of the Constitution. In the case on hand, as rightly argued by the learned counsel for the appellants, it is governed by a special Enactment, namely, The Indian Carriage of Goods by Sea Act, 1925 which overrides the general enactment namely The Limitation Act. We have already extracted the relevant Rule, namely Article III Rule 6 in the Schedule to the Act. It is not in dispute that the relevant provisions

applicable to the contract is [The Indian] Carriage of Goods by Sea Act, 1925. As referred to earlier, as per clause 3, unless the suit is brought within one year either after delivery of goods or the date when the goods should have been delivered, the claim cannot be recovered thereafter.

12. Now we shall consider the factual details as furnished by both parties. It is seen from Ex.A-1 on 22-6-1979 Bill of Lading No.IG-1 was issued by the Vessel to the plaintiff. The said Vessel arrived at the Port of Madras on 17-8-1979 and 'B' Certificate of shortlanding was issued by the Madras Port Trust on 17-9-1979 which is Ex.A-2. The provisional claim made by the plaintiff to second defendant on 23-11-79 has been marked as Ex.A-3. Regular claim under Ex. A-4 was made by the plaintiff to the defendants on 2-6-80. Under Ex. A-7 dated 30-6-80, the second defendant informed the plaintiff that investigation has been instituted in respect of missing packages. Under Ex.A-9 dated 22-9-80, the second defendant informed the plaintiff that two cartons are lying unmanifested at Calcutta and requested to clear the same. Under Ex. A-10 dated 11-10-80 the plaintiff informed the second defendant that the two packages at Calcutta is not connected with the shortland of packages under the claim. Under Ex. A-12 dated 2-12-80 the second defendant informed the plaintiff that investigation has been instituted to find out the fact position from London. By letter dated 4-7-81 under Ex.A-17 the second defendant requested the plaintiff to know whether any extension of time was sought for to keep the claim alive. By letter dated 10-7-81 under Ex.A-18 the plaintiff informed the second defendant that the claim was lodged within the period. By letter dated 25-11-82 under Ex.A-34 the plaintiff prayed for extension of time for a period of one year from the second defendant. On 16-12-82 under B-1 certificate short shipment was issued by the Customs Department, London. The second defendant in their letter dated 26-2-83 under Ex. A-36 informed the plaintiff that no request for extension of time was received to keep the claim alive within the statutory period. In the reply dated 1-3-83 under Ex. A-37 the plaintiff has stated that though extension of time was not obtained before the expiry of time but there were various correspondences between the plaintiff and the second defendant. The second defendant sent a reply dated 28-3-83 under Ex.A-38 reiterating that the claim is time barred and stands repudiated. The said letter was acknowledged by the plaintiff on 30-3-83 which has been marked as Ex. A-39. The letter dated 5-5-83-Ex. A-40 sent by 2nd defendant shows that they were closing the file as the claim did not warrant any settlement.

13. It is clear from the above details that the Vessel arrived at the Port of Madras on 17-8-79. According to the defendants, the suit should have been filed on or before 17th August, 1980, however filed on 7-11-84. Thus, according to the defendants, the cause of action, if any has become totally extinguished and the suit ought to have been dismissed in limine. We have already referred to the relevant provision, namely, Article III, Rule 6 of the Schedule to the Act and according to which, unless the suit is brought within one year either after the delivery of goods or the date when the goods should have been delivered, the liability, if any, cannot be enforced by way of a suit. In this regard, learned counsel for the appellants very much relied on a decision of the Supreme Court in *East and West Steamship Co. v. S.K. Ramalingam*, reported in AIR 1960 Supreme Court 1058 wherein the very same

provisions were considered by the Hon' ble Supreme Court. In other words, the main question that was considered relates to the interpretation of the third clause of paragraph 6 of Article III in the schedule to the Act. In para 11 of Their Order, after considering the preamble to the Indian Act, Their Lordships have observed: (para 11)

"11.....It is important to mention that apart from our own country, U.K., Australia, Canada, Ceylon, Newfoundland, New Zealand as well as Belgium, France and u.S.A. have given statutory effect □ wholly or partially to the Hague rules. This international character of the provisions of law as incorporated in the articles to the schedule to the Act makes it incumbent upon us to pay more than usual attention to the normal grammatical sense of the words and to guard ourselves against being influenced by similar words in other acts of our Legislature.

14. Coming to the Rule of Limitation or provision for extinction of a right to compensation in para 25, Their Lordships have further held: (para 25)

"25.....The question is however of some importance in the facts of the Madras case. For if the provision is one of limitation there would be some scope for argument in the facts of that case that the period was extended by acknowledgments of liability within the meaning of Art.19 of the Limitation Act. The question we have to decide is whether in saying that the ship or the carrier will be " discharged from liability", only the remedy of the shipper or the consignee was being barred or the right was also being terminated. It is useful to remember in this connection the international character of these rules, as has been already emphasised above. Rules of limitation are likely to vary from country to country. Provisions for extension of periods prescribed for limitation would similarly vary. We should be slow therefore to put on the word "discharged from liability" an interpretation which would produce results varying in different countries and thus keeping the position uncertain for both the shipper and the ship-owner. Quite apart from this consideration, however, we think that the ordinary grammatical sense of "discharged from liability" does not connote "free from the remedy as regards liability" but are more apt to mean a total extinction of the liability following upon an extinction of the right. We find it difficult to draw any reasonable distinction between the words "absolved from liability" and " discharged from liability" and think that these words "discharged from liability" were intended to mean and do mean that the liability has totally disappeared and not only that the remedy as regards the liability has disappeared. We are unable to agree with the learned Judge of the Madras High Court that these words merely mean that "that even though the right may inhere in the person who is entitled to the benefits, still the liability in the opposite party is discharged by the impossibility of enforcement". The distinction between the extinction of a right and the extinction of a remedy for the enforcement of that right, though fine, is of great importance. The Legislature could not but have been conscious of this distinction when using the words "discharged from all liability" in an Article purporting to prescribe rights and immunities of the shipowners. The words are apt to express an intention of total extinction of the liability and should, specially in view of the international character of the legislation, be

construed in that sense. It is hardly necessary to add that once the liability is extinguished under this clause, there is no scope of any acknowledgement of liability thereafter."

It is clear from the above discussion and conclusion that once the liability is extinguished under the said clause referred above, irrespective of acknowledgement of liability, the same cannot be enforced after the expiry of the prescribed period. They also observed that the said clause has to be interpreted specially in view of the international character of the legislation. We have already referred to the preamble of the [The Indian] Carriage of Goods by Sea Act, 1925 which shows that the said Act was brought in pursuant to the decision taken by international authorities after deliberation and discussion; accordingly, as observed by the Hon'ble Supreme Court, the provision particularly relating to limitation has to be construed strictly.

15. Regarding the starting point of limitation namely the date when the goods should have been delivered, the following conclusion in para 28 of their order is relevant: (para 28 and 29)

"28.....But whether the delivery is to be made to the consignee or to anybody else on his behalf the duty of the ship's master is to start the delivery as soon as possible after the ship's arrival at the port and to complete it before the date of departure from the port. Before the ship had actually left the port it is not possible to say that the time when delivery should be made has expired. Once however the vessel has left the port it cannot but be common ground between the carrier and the consignee that the time when delivery should have been made is over. It is this point of time, viz., the time when the ship leaves the port, which in our opinion should be taken as the time when the delivery should have been made. The fact that after this point of time correspondence started between the carrier and the consignee as regards the failure to deliver and at a later point of time the carrier communicates his inability to deliver cannot affect this question. Nor can the ultimate repudiation of any claim that may be made by the shipper or the consignee affect the ascertainment of the date when the goods should have been delivered. The arrival at port of the vessel by which the goods have been contracted to be carried being known and the departure being equally an ascertainable thing and the duty of the carrier being necessarily to complete

the delivery before leaving the port, the date by which the delivery should have been made is already a fixed point of time and later correspondence, claims or repudiation thereof can in no way change it.

29. We have therefore come to the conclusion that whatever be the proper mode of ascertaining the date when delivery "ought to be made" under Article 31 of the Limitation Act — whether that be the reasonable time for delivery in the circumstances of the case or the date when after correspondence the carrier intimates its inability to deliver or the date of the final repudiation of the claim on a claim for compensation having been made or in the case of part delivery the date when the bulk of the consignment was delivered — the date

when the goods should have been delivered for the purpose of the Third Clause of the 6th paragraph of Article III of the Act is the date when the ship by which the goods were contracted to be carried has left the port at which delivery was to be made."

Though in the case on hand the plaintiff was corresponding with the defendants from 23-11-79 onwards by writing letters and reminders under Exs. A-3 to A-51, and the defendants have acknowledged the same, in view of the peculiar provision prescribed in the Act for calculating the period of limitation, the plaintiff ought to have filed their suit within a period of one year when the ship by which the goods were contracted to be carried has left the port at which the delivery was to be made.

16. Similar question under the very same Act was considered by the Supreme Court in a later decision in *A.E.I. Lines Inc. v. J. Lopez*, reported in AIR 1972 Supreme Court 1405 wherein Their Lordships have applied the ratio laid down in AIR 1960 SC 1058 (cited supra). The following conclusion in para 7 is relevant:

"7. From the passages quoted above, it is clear that this Court had come to the conclusion that if by the time ship leaves the port, the goods shipped or any part thereof had not been delivered, it will be a case of non-delivery of the goods on the date when the goods should have been delivered. In that decision this Court has taken the view that the last date for filing the suit for "loss or damage" is one year from the date the ship left the port. The cause of action for filing the suit for "loss or damage" is one. Quite clearly, the claim in respect of short delivery is clearly barred by time. If we are to accept the contention of the plaintiff that his claim in respect of the damage caused to the goods delivered to him arose only on the date when the goods were delivered to him, then it means that the plaintiff had two causes of action under Clause (3) of Paragraph 6, one relating to the loss and another relating to damage. From the language of the clause in question it is not possible to accept that contention. As observed by this Court in the decision referred to above the time when the ship leaves the port should be taken as the time when the delivery should have been made. Any delivery which has not been made by that date comes within the mischief of clause (3) of Paragraph 6. We think that the question of law arising for decision in this case is covered by the ratio of the decision of this Court in *The East and West Steamship Company's case*, (1960) 3 SCR 820 = AIR 1060 SC 1058."

In view of the above decisions which are directly on the point, though learned Additional Central Government Standing counsel for the respondent has relied on *Province of Madras v. I.S. and C. Machdo*, reported in AIR 1955 Madras 519; and in *British India Steam Navigation Co., Ltd., v. Shanmughavilas Cashew Industries*, reported in 1990 (3) SCC 481, on going through the same, we are satisfied that they are not helpful to his case. Inasmuch as the Vessel S.S. Vishva Siddhi left the Port of Madras even in 1979 and the suit having been filed only on 7-11-84, in the light of the statutory provision, namely, Article III Rule 6 Clause (3) in the Schedule to [The Indian] Carriage of Goods by Sea Act, 1925, as interpreted by the Supreme Court in the above referred decisions, we sustain the objection raised by the defendants/

appellants and hold that the suit is barred by limitation. In view of our above conclusion on the limitation aspect, there is no need to go into the second question, namely, relating to merits of the claim made by the plaintiff.

17. Under these circumstances, the judgement and decree of the learned VI Judge, City Civil Court, Madras made in O.S.No. 917 3 of 1984 dated 28-3-1988 is set aside and the Appeal is allowed with costs.

R.B.

Index:- Yes

Internet:- Yes

To:

1. The VI Addl. Judge, City Civil Court, Madras (with records)
2. The Section Officer, V.R Records, High Court, Madras

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